

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE METHYL TERTIARY BUTYL ETHER  
("MTBE") PRODUCTS LIABILITY  
LITIGATION

Master File No. 1:00-1898  
MDL 1358 (SAS) M21-88

This document relates to:

*Commonwealth of Pennsylvania, et al. v. Exxon  
Mobil Corporation, et al.,*  
Case No. 1:14-cv-06228 SAS

**DECLARATION OF BRYAN BARNHART IN SUPPORT OF  
PLAINTIFF COMMONWEALTH OF PENNSYLVANIA'S OPPOSITION  
TO VITOL S.A.'S MOTION TO DISMISS**

I, Bryan Barnhart, declare:

1. I am an active member of the State Bar of California and an associate attorney at Miller & Axline, counsel of record for The Commonwealth of Pennsylvania. I have been involved in the discovery and pretrial proceedings in this action. I make this declaration based on my personal knowledge and, if called as a witness, I could testify competently thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of an electronic mail dated August 17, 2015, from me to David Langois, counsel for Vitol S.A., with a carbon copy to Peter Ligh, also counsel for Vitol SA, among others.

3. Attached hereto as Exhibit 2 is a true and correct copy of an electronic mail dated August 18, 2015, from Peter Ligh to me.

3. Attached as Exhibit 3 is a true and correct copy of an excerpt of the Responses of Vitol S.A. to the City of New York's Request for Admissions in *In re MTBE: City of New York v. Amerada Hess Corp.*, 04-cv-3417 from my office's litigation files.

4. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt of the Declaration of David Fransen, Managing Director of Vitol S.A., filed in support of Vitol S.A.'s Motion for Summary Judgment filed in *In re MTBE: Commonwealth of Puerto Rico v. Shell Oil Company*, No, 07-cv-10470, at ¶ 2 (10/18/13) from my office's litigation files.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3<sup>rd</sup> day of December, 2015, at Sacramento, California.

  
BRYAN B. BARNHART

# **EXHIBIT 1**

**Molly Han**

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**From:** Bryan Barnhart <bbarnhart@toxictorts.org>  
**Sent:** Monday, August 17, 2015 11:32 AM  
**To:** david.langlois@sutherland.com  
**Cc:** peter.ligh@sutherland.com; dmiller@toxictorts.org; Tracey O'Reilly;  
maxline@toxictorts.org; 'Molly Han'; 'Susan Tamayo'  
**Subject:** In re MTBE: Pennsylvania -- Vitol S.A.  
**Attachments:** 1st ROGs to Defendants (05-01-15).pdf

Good morning.

On behalf of the Commonwealth of Pennsylvania, I write to remind Vitol S.A. to appear in *Commonwealth of Pennsylvania v. Exxon Mobil Corp. et al.*, Case No. 1:14-cv-06228-SAS. I also write to remind Vitol to respond to the Commonwealth's First Set of Special Interrogatories (copy attached).

Our records show that Vitol was served by certified mail on July 7, 2014 at 1270 6<sup>th</sup> Avenue, Suite 1030, New York, New York 10020. Yet Vitol has not appeared or responded to discovery.

We assume that Vitol's failure to participate in this case results from an oversight.

As a courtesy, therefore, the Commonwealth will give Vitol 30 days from the date of this email to appear in this action, and to respond to the Commonwealth's interrogatories.

Thank you.

Bryan

# **EXHIBIT 2**

## Molly Han

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**From:** Ligh, Peter <Peter.Ligh@sutherland.com>  
**Sent:** Tuesday, August 18, 2015 8:09 AM  
**To:** Bryan Barnhart; Langlois, David  
**Cc:** dmiller@toxictorts.org; Tracey O'Reilly; maxline@toxictorts.org; 'Molly Han'; 'Susan Tamayo'  
**Subject:** RE: In re MTBE: Pennsylvania -- Vitol S.A.

Bryan,

Vitol S.A. has never been served in this matter. Vitol S.A. does not have an office at the address you list below. In fact, Vitol S.A. has not had a presence anywhere in the United States since 2006.

Peter Ligh | Partner | 212.389.5029

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**From:** Bryan Barnhart [<mailto:bbarnhart@toxictorts.org>]  
**Sent:** Monday, August 17, 2015 2:32 PM  
**To:** Langlois, David  
**Cc:** Ligh, Peter; dmiller@toxictorts.org; Tracey O'Reilly; maxline@toxictorts.org; 'Molly Han'; 'Susan Tamayo'  
**Subject:** In re MTBE: Pennsylvania -- Vitol S.A.

Good morning.

On behalf of the Commonwealth of Pennsylvania, I write to remind Vitol S.A. to appear in *Commonwealth of Pennsylvania v. Exxon Mobil Corp. et al.*, Case No. 1:14-cv-06228-SAS. I also write to remind Vitol to respond to the Commonwealth's First Set of Special Interrogatories (copy attached).

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As a courtesy, therefore, the Commonwealth will give Vitol 30 days from the date of this email to appear in this action, and to respond to the Commonwealth's interrogatories.

Thank you.

Bryan

This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential. If you are not an intended recipient, you may not review, copy, or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.

# **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In Re: Methyl Tertiary Butyl Ether  
("MTBE") Products Liability Litigation**

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**MDL NO. 1358**

**Master File C.A. No 1:00-1898 (SAS)**

This Document Relates To:

*City of New York v. Amerada Hess Corp., et. al., 04 Civ. 3417*

**RESPONSE OF VITOL S.A., INC. TO PLAINTIFF THE  
CITY OF NEW YORK'S REQUEST FOR ADMISSIONS**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and subject to the Definitions and Instructions to the Request for Admissions, Defendant Vitol S.A., Inc. makes the following Responses to Plaintiff City of New York's Request for Admissions:

**DEFINITIONS AND INSTRUCTIONS**

1. "Blending" means the mechanical mixing of motor gasoline blending components and oxygenates to produce finished motor gasoline.
2. "Defendant" or "Vitol S.A., Inc." means the responding defendant Vitol S.A., Inc., the Houston, Texas branch office of Vitol S.A. and its officers, directors, employees, partners, subsidiaries, agents, predecessors and representatives acting in their capacity on behalf of Vitol S.A., Inc.
3. "Document" or "Documents" are defined to include any and all manner of electronic, written, typed, printed, reproduced, filmed or recorded material, and all photographs, pictures, plans, drawings, or other representations of any kind of anything pertaining, describing,



of Documents, dated January 4, 2006; and/or (iv) Plaintiff's (Revised) Notice of Deposition Re: Taste and Odor, With Request For Production of Documents, dated January 4, 2006.

## **RESPONSES TO REQUEST FOR ADMISSIONS**

### **Affiliates**

1. Vitol S.A., Inc. is the United States branch office of Vitol S.A., a corporation organized in Switzerland with its principal United States place of business in Houston, Texas. Vitol S.A., Inc. is licensed to do business in the State of New York.

RESPONSE: Admit.

2. Vitol S.A., Inc. is a branch of Vitol S.A. and not separately incorporated. The laws of New York and Texas either permit or require a foreign corporation to add the word "corporation," "incorporated" "limited", or an abbreviation thereof to its name when registered in that state if the organization's name does not include one of those designations.

RESPONSE: Admit.

3. Vitol S.A., which has its principal office located in Geneva, Switzerland, is a subsidiary of Vitol Holding SARL, a corporation organized under the laws of Switzerland with an office located in Geneva, Switzerland.

RESPONSE: Admit.

4. Vitol Holding SARL is a subsidiary of Vitol Holding B.V., a corporation organized under the laws of Netherlands with an office located in Rotterdam, Netherlands.

RESPONSE: Admit.

5. North Atlantic Refining Limited ("NARL"), a corporation organized under the laws of the Province of Newfoundland and Labrador, was a subsidiary of Vitol Refining Group B.V. until October 19, 2006 when all of its capital shares were acquired by Harvest Energy

# **EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In Re: Methyl Tertiary Butyl Ether ("MTBE")  
Products Liability Litigation

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**Master Files No. 1:00 – 1898  
MDL 1358 (SAS)  
M21-88**

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**This Document Relates To:**  
***Commonwealth of Puerto Rico, et al. v.***  
***Shell Oil Company, et al.,***  
**Case No. 07-CV-10470-SAS**

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**AFFIDAVIT OF  
DAVID FRANSEN**

I, David Fransen, hereby declare, under the penalty of perjury, that the following is true and correct.

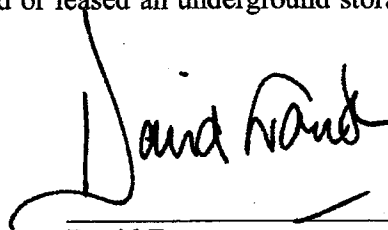
1. I am the Managing Director of Vitol S.A. ("VSA"). I am fully familiar with the facts set forth in this affidavit.

2. VSA is an international trading company with its headquarters in Geneva, Switzerland.

3. Until the end of December 2006, VSA had a branch office in Houston, Texas. At the end of December 2006, VSA voluntarily withdrew from activities in the United States and North American markets and closed its office in Houston, Texas.

4. Attached is a true and correct copy of the Statement Required to Do Business in Puerto Rico executed by VSA on May 18, 1994 and filed with the Commonwealth of Puerto Rico Department of State, and the Certificate of Authority issued by the Commonwealth of Puerto Rico Department of State to VSA on May 24, 1994. The Statement states in paragraph four that the purpose of VSA in Puerto Rico is "to purchase, distribute and sell all kinds of fuel, refined oil products of any kind and similar products. The Company may also participate industrial and commercial enterprises."

5. VSA has never owned, operated or leased an underground storage tank in Puerto Rico at any time.

A handwritten signature in black ink, appearing to read "David Fransen", is written over a horizontal line.

David Fransen

## **Vitol S.A.'s Statement Required to do Business in Puerto Rico**

CONFIDENTIAL

Estado Libre Asociado de Puerto Rico  
Commonwealth of Puerto Rico  
Departamento de Estado  
Department of State  
Rev. 1991

THIS FORM must be filled in Spanish  
Act. 4 - April 5, 1991

DECLARACION REQUERIDA PARA HACER NEGOCIOS EN PUERTO RICO

STATEMENT REQUIRED TO DO BUSINESS IN PUERTO RICO

NOSOTROS, LOS SUSCRIBIENTES,  
WE THE UNDERSIGNED,

Keith W. Swaby and  
James C. Dyer, IV

de acuerdo con las disposiciones del Artículo 1401 de la Ley General de  
in accordance with the provisions of Section 1401 of the General

Corporaciones para el Estado Libre Asociado de Puerto Rico, aprobada en 9 de enero de 1956,  
Corporation Law for the Commonwealth of Puerto Rico, approved January 9, 1956, DO HEREBY

POR LA PRESENTE CERTIFICAMOS:  
CERTIFY:

PRIMERO:--Que

FIRST:--That VITOL S.A.

una corporación organizada y que existe bajo las leyes de \_\_\_\_\_ ha radicado  
a corporation organized and existing under the laws of Switzerland

en las oficinas del Departamento de Estado del Estado Libre Asociado de Puerto Rico, una copia  
has herewith filed in the office of the Department of State of the Commonwealth of Puerto Rico,

certificada de su carta constitutiva.  
a certified copy of its charter.

SEGUNDO:--Que el nombre y dirección de su agente autorizado para recibir emplazamientos en el  
Estado Libre Asociado de Puerto Rico son:

SECONO:--That the name and address of its Authorized Agent in said Commonwealth of Puerto Rico  
upon whom service of process may be made are:

G T Corporation System, 361 San Francisco Street, Penthouse, Old San Juan,  
Puerto Rico 00901

TERCERO:--Que el activo de la corporación es \_\_\_\_\_ DOLARES.  
THIRD:--That the assets of said corporation are 239,000,000 DOLLARS.

y el pasivo de la misma es \_\_\_\_\_ DOLARES.  
and that the liabilities thereof are 238,000,000 DOLLARS.

CUARTO:--El propósito de la corporación en Puerto Rico es:


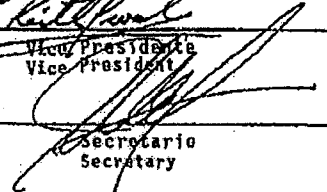
FOURTH:--The purpose of the corporation in Puerto Rico is:

TO PURCHASE, DISTRIBUTE AND SELL ALL KINDS OF FUEL, REFINED OIL PRODUCTS OF ANY  
KIND AND SIMILAR PRODUCTS. THE COMPANY MAY ALSO PARTICIPATE INDUSTRIAL AND COMMERCIAL  
ENTERPRISES.

CONFIDENTIAL

EN TESTIMONIO DE LO CUAL, firmamos la presente en \_\_\_\_\_, hoy día  
IN TESTIMONY WHEREOF, we have hereunto set our respective hands at Houston

\_\_\_\_\_ de 19\_\_\_\_\_.  
this day of 5/14/94

  
\_\_\_\_\_  
Vice Presidente  
Vice President  
  
\_\_\_\_\_  
Secretario  
Secretary

STATE OF Texas

COUNTY OF Harris

\_\_\_\_\_  
Keith W. Swaby

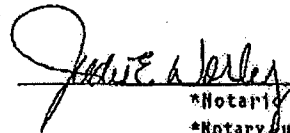
\_\_\_\_\_  
James C. Dyer, IV

después de ser debidamente juramentados, declaran que son presidente y secretario,  
being first duly sworn, upon their oaths do severally say that they are

respectivamente de \_\_\_\_\_,  
respectively the President and the Secretary of said VITOL S.A.

la corporación mencionada anteriormente, y que lo expuesto en la anterior declaración es la verdad,  
a corporation as aforesaid, and that the matters and facts stated in the foregoing statement are true.

Jurado y suscrito ante mí, hoy día 18th de May de 19 94.  
Subscribed and sworn to before me, this day of

  
\_\_\_\_\_  
\*Notario Público  
\*Notary Public

\*Si el juramento es hecho fuera de Puerto Rico, deberá autenticar el carácter oficial  
del Notario.

\*If this document is notarized in other jurisdiction than Puerto Rico, the authority of  
the Notary Public must be proved by the county clerk or any other public officer performing  
similar duties.

**PROOF OF SERVICE VIA LEXISNEXIS FILE & SERVE**

*Commonwealth of Pennsylvania v. Exxon Mobil Corporation, et al.*,  
United States District Court, Southern District of New York Case No. 14-cv-06228 (SAS)

I, the undersigned, declare that I am, and was at the time of service of the paper(s) herein referred to, over the age of 18 years and not a party to this action. My business address is 1050 Fulton Avenue, Suite 100, Sacramento, CA 95825-4225.

On the date below, I served the following document on all counsel in this action electronically through LexisNexis File & Serve:

**DECLARATION OF BRYAN BARNHART IN SUPPORT OF  
PLAINTIFF COMMONWEALTH OF PENNSYLVANIA'S OPPOSITION  
TO VITOL SA'S MOTION TO DISMISS**

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on December 7, 2015, at Sacramento, California.

  
TONYA L. ZIMMERMAN